

SENATE BILL NO. 1512

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Education and Health

on \_\_\_\_\_)

(Patron Prior to Substitute--Senator Mason)

A BILL to amend and reenact §§ 37.2-800, 37.2-804.2, 37.2-808 through 37.2-810, 37.2-814, 37.2-816, 37.2-817, and 37.2-1104 of the Code of Virginia, relating to temporary detention; certified evaluators; report.

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 37.2-800, 37.2-804.2, 37.2-808 through 37.2-810, 37.2-814, 37.2-816, 37.2-817, and 37.2-1104 of the Code of Virginia are amended and reenacted as follows:**

**§ 37.2-800. Applicability of chapter.**

For the purposes of this chapter, whenever the term mental illness appears, it shall include substance abuse. Whenever the term responsible person appears, it shall include a family member as that term is defined in § 37.2-100, a community services board or behavioral health authority, any treating physician of the person, a certified evaluator, or a law-enforcement officer. Whenever the term community services board or board appears, it shall include behavioral health authority.

**§ 37.2-804.2. Disclosure of records.**

Any health care provider, as defined in § 32.1-127.1:03, or other provider who has provided or is currently providing services to a person who is the subject of proceedings pursuant to this chapter shall, upon request, disclose to a magistrate, the court, the person's attorney, the person's guardian ad litem, the examiner identified to perform an examination pursuant to § 37.2-815, the community services board or its designee or a certified evaluator performing any evaluation, preadmission screening, or monitoring duties pursuant to this chapter, or a law-enforcement officer any information that is necessary and appropriate for the performance of his duties pursuant to this chapter. Any health care provider, as defined in § 32.1-127.1:03, or other provider who has provided or is currently evaluating or providing services to

27 a person who is the subject of proceedings pursuant to this chapter shall disclose information that may be  
28 necessary for the treatment of such person to any other health care provider or other provider evaluating  
29 or providing services to or monitoring the treatment of the person. Health records disclosed to a law-  
30 enforcement officer shall be limited to information necessary to protect the officer, the person, or the  
31 public from physical injury or to address the health care needs of the person. Information disclosed to a  
32 law-enforcement officer shall not be used for any other purpose, disclosed to others, or retained.

33 Any health care provider providing services to a person who is the subject of proceedings under  
34 this chapter shall (i) inform the person that his family member or personal representative, including any  
35 agent named in an advance directive executed in accordance with the Health Care Decisions Act (§ 54.1-  
36 2981 et seq.), will be notified of information that is directly relevant to such individual's involvement with  
37 the person's health care, which may include the person's location and general condition, in accordance  
38 with subdivision D 34 of § 32.1-127.1:03, and (ii) make a reasonable effort to so notify the person's family  
39 member or personal representative, unless the provider has actual knowledge that the family member or  
40 personal representative is currently prohibited by court order from contacting the person. No health care  
41 provider shall be required to notify a person's family member or personal representative pursuant to this  
42 section if the health care provider has actual knowledge that such notice has been provided.

43 Any health care provider disclosing records pursuant to this section shall be immune from civil  
44 liability for any harm resulting from the disclosure, including any liability under the federal Health  
45 Insurance Portability and Accountability Act (42 U.S.C. § 1320d et seq.), as amended, unless the person  
46 or provider disclosing such records intended the harm or acted in bad faith.

47 **§ 37.2-808. Emergency custody; issuance and execution of order.**

48 A. Any magistrate shall issue, upon the sworn petition of any responsible person, treating  
49 physician, or upon his own motion, or a court may issue pursuant to § 19.2-271.6, an emergency custody  
50 order when he has probable cause to believe that any person (i) has a mental illness and that there exists a  
51 substantial likelihood that, as a result of mental illness, the person will, in the near future, (a) cause serious  
52 physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening  
53 harm and other relevant information, if any, or (b) suffer serious harm due to his lack of capacity to protect

54 himself from harm or to provide for his basic human needs, (ii) is in need of hospitalization or treatment,  
55 and (iii) is unwilling to volunteer or incapable of volunteering for hospitalization or treatment. Any  
56 emergency custody order entered pursuant to this section shall provide for the disclosure of medical  
57 records pursuant to § 37.2-804.2. This subsection shall not preclude any other disclosures as required or  
58 permitted by law.

59         When considering whether there is probable cause to issue an emergency custody order, the  
60 magistrate may, in addition to the petition, or the court may pursuant to § 19.2-271.6, consider (1) the  
61 recommendations of any treating or examining physician or psychologist licensed in Virginia, if available,  
62 (2) any past actions of the person, (3) any past mental health treatment of the person, (4) any relevant  
63 hearsay evidence, (5) any medical records available, (6) any affidavits submitted, if the witness is  
64 unavailable and it so states in the affidavit, and (7) any other information available that the magistrate or  
65 the court considers relevant to the determination of whether probable cause exists to issue an emergency  
66 custody order.

67         B. Any person for whom an emergency custody order is issued shall be taken into custody and  
68 transported to a convenient location to be evaluated to determine whether the person meets the criteria for  
69 temporary detention pursuant to § 37.2-809 and to assess the need for hospitalization or treatment. The  
70 evaluation shall be made by a person designated by the community services board or a certified evaluator  
71 who is skilled in the diagnosis and treatment of mental illness and who has completed a certification  
72 program approved by the Department.

73         C. The magistrate or court issuing an emergency custody order shall specify the primary law-  
74 enforcement agency and jurisdiction to execute the emergency custody order and provide transportation.  
75 However, the magistrate or court shall consider any request to authorize transportation by an alternative  
76 transportation provider in accordance with this section, whenever an alternative transportation provider is  
77 identified to the magistrate or court, which may be a person, facility, or agency, including a family member  
78 or friend of the person who is the subject of the order, a representative of the community services board,  
79 or a certified evaluator, or other transportation provider with personnel trained to provide transportation  
80 in a safe manner, upon determining, following consideration of information provided by the petitioner;

81 the community services board or its designee or a certified evaluator; the local law-enforcement agency,  
82 if any; the person's treating physician, if any; or other persons who are available and have knowledge of  
83 the person, and, when the magistrate or court deems appropriate, the proposed alternative transportation  
84 provider, either in person or via two-way electronic video and audio or telephone communication system,  
85 that the proposed alternative transportation provider is available to provide transportation, willing to  
86 provide transportation, and able to provide transportation in a safe manner.

87         When transportation is ordered to be provided by an alternative transportation provider, the  
88 magistrate or court shall order the specified primary law-enforcement agency to execute the order, to take  
89 the person into custody, and to transfer custody of the person to the alternative transportation provider  
90 identified in the order. In such cases, a copy of the emergency custody order shall accompany the person  
91 being transported pursuant to this section at all times and shall be delivered by the alternative  
92 transportation provider to the community services board or its designee or certified evaluator responsible  
93 for conducting the evaluation. The community services board or its designee or certified evaluator  
94 conducting the evaluation shall return a copy of the emergency custody order to the court designated by  
95 the magistrate or the court that issued the emergency custody order as soon as is practicable. Delivery of  
96 an order to a law-enforcement officer or alternative transportation provider and return of an order to the  
97 court may be accomplished electronically or by facsimile.

98         Transportation under this section shall include transportation to a medical facility as may be  
99 necessary to obtain emergency medical evaluation or treatment that shall be conducted immediately in  
100 accordance with state and federal law. Transportation under this section shall include transportation to a  
101 medical facility for a medical evaluation if a physician at the hospital in which the person subject to the  
102 emergency custody order may be detained requires a medical evaluation prior to admission.

103         D. In specifying the primary law-enforcement agency and jurisdiction for purposes of this section,  
104 the magistrate or court shall order the primary law-enforcement agency from the jurisdiction served by  
105 the community services board or certified evaluator that designated the person to perform the evaluation  
106 required in subsection B to execute the order and, in cases in which transportation is ordered to be provided  
107 by the primary law-enforcement agency, provide transportation. If the community services board serves

108 more than one jurisdiction, the magistrate or court shall designate the primary law-enforcement agency  
109 from the particular jurisdiction within the community services board's service area where the person who  
110 is the subject of the emergency custody order was taken into custody or, if the person has not yet been  
111 taken into custody, the primary law-enforcement agency from the jurisdiction where the person is  
112 presently located to execute the order and provide transportation.

113 E. The law-enforcement agency or alternative transportation provider providing transportation  
114 pursuant to this section may transfer custody of the person to the facility or location to which the person  
115 is transported for the evaluation required in subsection B, G, or H if the facility or location (i) is licensed  
116 to provide the level of security necessary to protect both the person and others from harm, (ii) is actually  
117 capable of providing the level of security necessary to protect the person and others from harm, and (iii)  
118 in cases in which transportation is provided by a law-enforcement agency, has entered into an agreement  
119 or memorandum of understanding with the law-enforcement agency setting forth the terms and conditions  
120 under which it will accept a transfer of custody, provided, however, that the facility or location may not  
121 require the law-enforcement agency to pay any fees or costs for the transfer of custody.

122 F. A law-enforcement officer may lawfully go or be sent beyond the territorial limits of the county,  
123 city, or town in which he serves to any point in the Commonwealth for the purpose of executing an  
124 emergency custody order pursuant to this section.

125 G. A law-enforcement officer who, based upon his observation or the reliable reports of others,  
126 has probable cause to believe that a person meets the criteria for emergency custody as stated in this  
127 section may take that person into custody and transport that person to an appropriate location to assess the  
128 need for hospitalization or treatment without prior authorization. A law-enforcement officer who takes a  
129 person into custody pursuant to this subsection or subsection H may lawfully go or be sent beyond the  
130 territorial limits of the county, city, or town in which he serves to any point in the Commonwealth for the  
131 purpose of obtaining the assessment. Such evaluation shall be conducted immediately. The period of  
132 custody shall not exceed eight hours from the time the law-enforcement officer takes the person into  
133 custody.

134 H. A law-enforcement officer who is transporting a person who has voluntarily consented to be  
135 transported to a facility for the purpose of assessment or evaluation and who is beyond the territorial limits  
136 of the county, city, or town in which he serves may take such person into custody and transport him to an  
137 appropriate location to assess the need for hospitalization or treatment without prior authorization when  
138 the law-enforcement officer determines (i) that the person has revoked consent to be transported to a  
139 facility for the purpose of assessment or evaluation, and (ii) based upon his observations, that probable  
140 cause exists to believe that the person meets the criteria for emergency custody as stated in this section.  
141 The period of custody shall not exceed eight hours from the time the law-enforcement officer takes the  
142 person into custody.

143 I. Nothing herein shall preclude a law-enforcement officer or alternative transportation provider  
144 from obtaining emergency medical treatment or further medical evaluation at any time for a person in his  
145 custody as provided in this section.

146 J. A representative of the primary law-enforcement agency specified to execute an emergency  
147 custody order or a representative of the law-enforcement agency employing a law-enforcement officer  
148 who takes a person into custody pursuant to subsection G or H shall notify the community services board  
149 or certified evaluator responsible for conducting the evaluation required in subsection B, G, or H as soon  
150 as practicable after execution of the emergency custody order or after the person has been taken into  
151 custody pursuant to subsection G or H.

152 K. The person shall remain in custody until (i) a temporary detention order is issued in accordance  
153 with § 37.2-809, (ii) an order for temporary detention for observation, testing, or treatment is entered in  
154 accordance with § 37.2-1104, ending law enforcement custody, (iii) the person is released, or (iv) the  
155 emergency custody order expires. An emergency custody order shall be valid for a period not to exceed  
156 eight hours from the time of execution.

157 L. Nothing in this section shall preclude the issuance of an order for temporary detention for  
158 testing, observation, or treatment pursuant to § 37.2-1104 for a person who is also the subject of an  
159 emergency custody order issued pursuant to this section. In any case in which an order for temporary  
160 detention for testing, observation, or treatment is issued for a person who is also the subject of an

161 emergency custody order, the person may be detained by a hospital emergency room or other appropriate  
162 facility for testing, observation, and treatment for a period not to exceed 24 hours, unless extended by the  
163 court as part of an order pursuant to § 37.2-1101, in accordance with subsection C of § 37.2-1104. Upon  
164 completion of testing, observation, or treatment pursuant to § 37.2-1104, the hospital emergency room or  
165 other appropriate facility in which the person is detained shall notify the nearest community services board  
166 or certified evaluator, and the designee of the community services board or certified evaluator shall, as  
167 soon as is practicable and prior to the expiration of the order for temporary detention issued pursuant to §  
168 37.2-1104, conduct an evaluation of the person to determine if he meets the criteria for temporary  
169 detention pursuant to § 37.2-809.

170 M. Any person taken into emergency custody pursuant to this section shall be given a written  
171 summary of the emergency custody procedures and the statutory protections associated with those  
172 procedures.

173 N. If an emergency custody order is not executed within eight hours of its issuance, the order shall  
174 be void and shall be returned unexecuted to the office of the clerk of the issuing court or, if such office is  
175 not open, to any magistrate serving the jurisdiction of the issuing court.

176 O. In addition to the eight-hour period of emergency custody set forth in subsection G, H, or K, if  
177 the individual is detained in a state facility pursuant to subsection E of § 37.2-809, the state facility and  
178 an employee or designee of the community services board or certified evaluator as defined in § 37.2-809  
179 may, for an additional four hours, continue to attempt to identify an alternative facility that is able and  
180 willing to provide temporary detention and appropriate care to the individual.

181 P. Payments shall be made pursuant to § 37.2-804 to licensed health care providers for medical  
182 screening and assessment services provided to persons with mental illnesses while in emergency custody.

183 Q. No person who provides alternative transportation pursuant to this section shall be liable to the  
184 person being transported for any civil damages for ordinary negligence in acts or omissions that result  
185 from providing such alternative transportation.

186 R. For purposes of this section:

187 "Law-enforcement agency" includes an auxiliary police force established pursuant to § 15.2-1731.

188 "Law-enforcement officer" includes an auxiliary police officer appointed or provided for pursuant  
189 to §§ 15.2-1731 and 15.2-1733, except for the purposes of subsection G.

190 **§ 37.2-809. Involuntary temporary detention; issuance and execution of order.**

191 A. For the purposes of this section:

192 "Certified evaluator" means (i) an individual with an educational attainment of a master's or  
193 doctoral degree with an associated professional license or (ii) a licensed professional counselor, licensed  
194 clinical social worker, licensed marriage and family therapist, licensed clinical psychologist, psychiatric  
195 nurse practitioner or psychiatric clinical nurse specialist, doctor of medicine, doctor of osteopathic  
196 medicine, or bachelor's prepared registered nurse with five years of experience. A certified evaluator shall  
197 (a) be employed or contracted by a hospital with a psychiatric emergency department, (b) be skilled in the  
198 assessment and treatment of mental illness, (c) have completed a certification program approved by the  
199 Department, (d) be able to provide an independent examination of the person, (e) not be related by blood  
200 or marriage to the person being evaluated, (f) have no financial interest in the admission or treatment of  
201 the person being evaluated, and (g) have no investment interest in the facility detaining or admitting the  
202 person under this article.

203 "Designee of the local community services board" means an examiner designated by the local  
204 community services board who (i) is skilled in the assessment and treatment of mental illness, (ii) has  
205 completed a certification program approved by the Department, (iii) is able to provide an independent  
206 examination of the person, (iv) is not related by blood or marriage to the person being evaluated, (v) has  
207 no financial interest in the admission or treatment of the person being evaluated, (vi) has no investment  
208 interest in the facility detaining or admitting the person under this article, and (vii) except for employees  
209 of state hospitals and of the U.S. Department of Veterans Affairs, is not employed by the facility.

210 "Employee" means an employee of the local community services board who is skilled in the  
211 assessment and treatment of mental illness and has completed a certification program approved by the  
212 Department.

213 "Investment interest" means the ownership or holding of an equity or debt security, including  
214 shares of stock in a corporation, interests or units of a partnership, bonds, debentures, notes, or other equity  
215 or debt instruments.

216 B. A magistrate shall issue, upon the sworn petition of any responsible person, treating physician,  
217 or upon his own motion and only after an evaluation conducted in-person or by means of a two-way  
218 electronic video and audio communication system as authorized in § 37.2-804.1 by an employee or a  
219 designee of the local community services board or a certified evaluator to determine whether the person  
220 meets the criteria for temporary detention, a temporary detention order if it appears from all evidence  
221 readily available, including any recommendation from a physician, clinical psychologist, clinical social  
222 worker, or licensed professional counselor treating the person, that the person (i) has a mental illness and  
223 that there exists a substantial likelihood that, as a result of mental illness, the person will, in the near future,  
224 (a) cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting,  
225 or threatening harm and other relevant information, if any, or (b) suffer serious harm due to his lack of  
226 capacity to protect himself from harm or to provide for his basic human needs; (ii) is in need of  
227 hospitalization or treatment; and (iii) is unwilling to volunteer or incapable of volunteering for  
228 hospitalization or treatment. The magistrate shall also consider, if available, (a) information provided by  
229 the person who initiated emergency custody and (b) the recommendations of any treating or examining  
230 physician licensed in Virginia either verbally or in writing prior to rendering a decision. Any temporary  
231 detention order entered pursuant to this section shall provide for the disclosure of medical records pursuant  
232 to § 37.2-804.2. This subsection shall not preclude any other disclosures as required or permitted by law.

233 C. When considering whether there is probable cause to issue a temporary detention order, the  
234 magistrate may, in addition to the petition, consider (i) the recommendations of any treating or examining  
235 physician, psychologist, clinical social worker, or licensed professional counselor licensed in Virginia, if  
236 available, (ii) any past actions of the person, (iii) any past mental health treatment of the person, (iv) any  
237 relevant hearsay evidence, (v) any medical records available, (vi) any affidavits submitted, if the witness  
238 is unavailable and it so states in the affidavit, and (vii) any other information available that the magistrate

239 considers relevant to the determination of whether probable cause exists to issue a temporary detention  
240 order.

241 D. A magistrate may issue a temporary detention order without an emergency custody order  
242 proceeding. A magistrate may issue a temporary detention order without a prior evaluation pursuant to  
243 subsection B if (i) the person has been personally examined within the previous 72 hours by an employee  
244 or a designee of the local community services board or a certified evaluator or (ii) there is a significant  
245 physical, psychological, or medical risk to the person or to others associated with conducting such  
246 evaluation.

247 E. An employee or a designee of the local community services board or a certified evaluator shall  
248 determine the facility of temporary detention in accordance with the provisions of § 37.2-809.1 for all  
249 persons detained pursuant to this section. An employee or designee of the local community services board  
250 or a certified evaluator may change the facility of temporary detention and may designate an alternative  
251 facility for temporary detention at any point during the period of temporary detention if it is determined  
252 that the alternative facility is a more appropriate facility for temporary detention of the person given the  
253 specific security, medical, or behavioral health needs of the person. In cases in which the facility of  
254 temporary detention is changed following transfer of custody to an initial facility of temporary custody,  
255 transportation of the person to the alternative facility of temporary detention shall be provided in  
256 accordance with the provisions of § 37.2-810. The initial facility of temporary detention shall be identified  
257 on the preadmission screening report and indicated on the temporary detention order; however, if an  
258 employee or designee of the local community services board or the certified evaluator designates an  
259 alternative facility, that employee or designee or certified evaluator shall provide written notice forthwith,  
260 on a form developed by the Executive Secretary of the Supreme Court of Virginia, to the clerk of the  
261 issuing court of the name and address of the alternative facility. Subject to the provisions of § 37.2-809.1,  
262 if a facility of temporary detention cannot be identified by the time of the expiration of the period of  
263 emergency custody pursuant to § 37.2-808, the person shall be detained in a state facility for the treatment  
264 of persons with mental illness and such facility shall be indicated on the temporary detention order. Except  
265 as provided in § 37.2-811 for inmates requiring hospitalization in accordance with subdivision A 2 of §

266 19.2-169.6, the person shall not be detained in a jail or other place of confinement for persons charged  
267 with criminal offenses. Except as provided in § 37.2-811 for inmates requiring hospitalization in  
268 accordance with subdivision A 2 of § 19.2-169.6, the person shall remain in the custody of law  
269 enforcement until (i) the person is either detained within a secure facility or (ii) custody has been accepted  
270 by the appropriate personnel designated by either the initial facility of temporary detention identified in  
271 the temporary detention order or by the alternative facility of temporary detention designated by the  
272 employee or designee of the local community services board or the certified evaluator pursuant to this  
273 subsection. The person detained or in custody pursuant to this section shall be given a written summary  
274 of the temporary detention procedures and the statutory protections associated with those procedures.

275 F. Any facility caring for a person placed with it pursuant to a temporary detention order is  
276 authorized to provide emergency medical and psychiatric services within its capabilities when the facility  
277 determines that the services are in the best interests of the person within its care. The costs incurred as a  
278 result of the hearings and by the facility in providing services during the period of temporary detention  
279 shall be paid and recovered pursuant to § 37.2-804. The maximum costs reimbursable by the  
280 Commonwealth pursuant to this section shall be established by the State Board of Medical Assistance  
281 Services based on reasonable criteria. The State Board of Medical Assistance Services shall, by regulation,  
282 establish a reasonable rate per day of inpatient care for temporary detention.

283 G. The employee or the designee of the local community services board or the certified evaluator  
284 who is conducting the evaluation pursuant to this section shall determine, prior to the issuance of the  
285 temporary detention order, the insurance status of the person. Where coverage by a third party payor exists,  
286 the facility seeking reimbursement under this section shall first seek reimbursement from the third party  
287 payor. The Commonwealth shall reimburse the facility only for the balance of costs remaining after the  
288 allowances covered by the third party payor have been received.

289 H. The duration of temporary detention shall be sufficient to allow for completion of the  
290 examination required by § 37.2-815, preparation of the preadmission screening report required by § 37.2-  
291 816, and initiation of mental health treatment to stabilize the person's psychiatric condition to avoid  
292 involuntary commitment where possible, but shall not exceed 72 hours prior to a hearing. If the 72-hour

293 period herein specified terminates on a Saturday, Sunday, legal holiday, or day on which the court is  
294 lawfully closed, the person may be detained, as herein provided, until the close of business on the next  
295 day that is not a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed. The person  
296 may be released, pursuant to § 37.2-813, before the 72-hour period herein specified has run.

297 I. If a temporary detention order is not executed within 24 hours of its issuance, or within a shorter  
298 period as is specified in the order, the order shall be void and shall be returned unexecuted to the office of  
299 the clerk of the issuing court or, if the office is not open, to any magistrate serving the jurisdiction of the  
300 issuing court. Subsequent orders may be issued upon the original petition within 96 hours after the petition  
301 is filed. However, a magistrate must again obtain the advice of an employee or a designee of the local  
302 community services board or a certified evaluator prior to issuing a subsequent order upon the original  
303 petition. Any petition for which no temporary detention order or other process in connection therewith is  
304 served on the subject of the petition within 96 hours after the petition is filed shall be void and shall be  
305 returned to the office of the clerk of the issuing court.

306 J. The Executive Secretary of the Supreme Court of Virginia shall establish and require that a  
307 magistrate, as provided by this section, be available seven days a week, 24 hours a day, for the purpose of  
308 performing the duties established by this section. Each community services board shall provide to each  
309 general district court and magistrate's office within its service area a list of its employees and designees  
310 who are available to perform the evaluations required herein. The employer of any certified evaluator shall  
311 provide to each general district court and magistrate's office within its service area a list of its employees  
312 and designees who are available to perform the evaluations required herein.

313 K. For purposes of this section, a health care provider, including any certified evaluator or designee  
314 of a local community services board or behavioral health authority, shall not be required to encrypt any  
315 email containing information or medical records provided to a magistrate unless there is reason to believe  
316 that a third party will attempt to intercept the email.

317 L. If the employee or designee of the community services board or the certified evaluator who is  
318 conducting the evaluation pursuant to this section recommends that the person should not be subject to a  
319 temporary detention order, such employee or designee or certified evaluator shall (i) inform the petitioner,

320 the person who initiated emergency custody if such person is present, and an onsite treating physician of  
321 his recommendation; (ii) promptly inform such person who initiated emergency custody that the  
322 community services board or certified evaluator will facilitate communication between the person and the  
323 magistrate if the person disagrees with recommendations of the employee or designee of the community  
324 services board or certified evaluator who conducted the evaluation and the person who initiated emergency  
325 custody so requests; and (iii) upon prompt request made by the person who initiated emergency custody,  
326 arrange for such person who initiated emergency custody to communicate with the magistrate as soon as  
327 is practicable and prior to the expiration of the period of emergency custody. The magistrate shall consider  
328 any information provided by the person who initiated emergency custody and any recommendations of  
329 the treating or examining physician and the employee or designee of the community services board or  
330 certified evaluator who conducted the evaluation and consider such information and recommendations in  
331 accordance with subsection B in making his determination to issue a temporary detention order. The  
332 person who is the subject of emergency custody shall remain in the custody of law enforcement or a  
333 designee of law enforcement and shall not be released from emergency custody until communication with  
334 the magistrate pursuant to this subsection has concluded and the magistrate has made a determination  
335 regarding issuance of a temporary detention order.

336 M. For purposes of this section, "person who initiated emergency custody" means any person who  
337 initiated the issuance of an emergency custody order pursuant to § 37.2-808 or a law-enforcement officer  
338 who takes a person into custody pursuant to subsection G of § 37.2-808.

339 N. In any case in which a person subject to an evaluation pursuant to this section is receiving  
340 services in a hospital emergency department, the treating physician or his designee and the employee or  
341 designee of the local community services board or certified evaluator shall disclose to each other relevant  
342 information pertaining to the individual's treatment in the emergency department.

343 **§ 37.2-809.1. Facility of temporary detention.**

344 A. In each case in which an employee or designee of the local community services board or  
345 certified evaluator as defined in § 37.2-809 is required to make an evaluation of an individual pursuant to  
346 subsection B, G, or H of § 37.2-808, an employee or designee of the local community services board or

347 certified evaluator shall, upon being notified of the need for such evaluation, contact the state facility for  
348 the area in which the community services board is located and notify the state facility that the individual  
349 will be transported to the facility upon issuance of a temporary detention order if no other facility of  
350 temporary detention can be identified by the time of the expiration of the period of emergency custody  
351 pursuant to § 37.2-808. Upon completion of the evaluation, the employee or designee of the local  
352 community services board or certified evaluator shall convey to the state facility information about the  
353 individual necessary to allow the state facility to determine the services the individual will require upon  
354 admission.

355 B. A state facility may, following the notice in accordance with subsection A, conduct a search for  
356 an alternative facility that is able and willing to provide temporary detention and appropriate care to the  
357 individual, which may include another state facility if the state facility notified in accordance with  
358 subsection A is unable to provide temporary detention and appropriate care for the individual. Under no  
359 circumstances shall a state facility fail or refuse to admit an individual who meets the criteria for temporary  
360 detention pursuant to § 37.2-809 unless an alternative facility that is able to provide temporary detention  
361 and appropriate care agrees to accept the individual for temporary detention and the individual shall not  
362 during the duration of the temporary detention order be released from custody except for purposes of  
363 transporting the individual to the state facility or alternative facility in accordance with the provisions of  
364 § 37.2-810. If an alternative facility is identified and agrees to accept the individual for temporary  
365 detention, the state facility shall notify the community services board or certified evaluator, and an  
366 employee or designee of the community services board or certified evaluator shall designate the alternative  
367 facility on the prescreening report.

368 C. A state facility may conduct a search for an alternative facility that is able and willing to provide  
369 temporary detention and appropriate care to the individual in accordance with subsection B if the  
370 individual is in the custody of an alternative transportation provider.

371 D. The facility of temporary detention designated in accordance with this section shall be one that  
372 has been approved pursuant to regulations of the Board.

373 **§ 37.2-810. Transportation of person in the temporary detention process.**

374 A. In specifying the primary law-enforcement agency and jurisdiction for purposes of this section,  
375 the magistrate shall specify in the temporary detention order the law-enforcement agency of the  
376 jurisdiction in which the person resides, or any other willing law-enforcement agency that has agreed to  
377 provide transportation, to execute the order and, in cases in which transportation is ordered to be provided  
378 by the primary law-enforcement agency, provide transportation. However, if the nearest boundary of the  
379 jurisdiction in which the person resides is more than 50 miles from the nearest boundary of the jurisdiction  
380 in which the person is located, the law-enforcement agency of the jurisdiction in which the person is  
381 located shall execute the order and provide transportation.

382 B. The magistrate issuing the temporary detention order shall (i) specify the law-enforcement  
383 agency to execute the order and (ii) designate a transportation provider. In determining the transportation  
384 provider, the magistrate shall consider any request to authorize transportation by an alternative  
385 transportation provider in accordance with this section, whenever an alternative transportation provider is  
386 identified to the magistrate, which may be a person, facility, or agency, including a family member or  
387 friend of the person who is the subject of the temporary detention order, a representative of the community  
388 services board, a certified evaluator, an employee of or person providing services pursuant to a contract  
389 with the Department, or other transportation provider with personnel trained to provide transportation in  
390 a safe manner. Upon determining, following consideration of information provided by the petitioner; the  
391 community services board or its designee; the certified evaluator; the local law-enforcement agency, if  
392 any; the person's treating physician, if any; or other persons who are available and have knowledge of the  
393 person, and, when the magistrate deems appropriate, the proposed alternative transportation provider,  
394 either in person or via two-way electronic video and audio or telephone communication system, that an  
395 alternative transportation provider is available to provide transportation, willing to provide transportation,  
396 and able to provide transportation in a safe manner, the magistrate shall designate such alternative  
397 transportation provider to provide transportation of the person. If no alternative transportation provider is  
398 available to provide transportation, willing to provide transportation, and able to provide transportation in  
399 a safe manner, the magistrate shall designate the primary law-enforcement agency and jurisdiction  
400 designated to execute the temporary detention order to provide transportation of the person.

401           When transportation is ordered to be provided by an alternative transportation provider, the  
402 magistrate shall order the specified law-enforcement agency to execute the order, to take the person into  
403 custody, and to transfer custody of the person to the alternative transportation provider identified in the  
404 order. The primary law-enforcement agency may transfer custody of the person to the alternative  
405 transportation provider immediately upon execution of the temporary detention order based on the  
406 availability of alternative transportation providers. The alternative transportation provider shall maintain  
407 custody of the person from the time custody is transferred to the alternative transportation provider by the  
408 primary law-enforcement agency until such time as custody of the person is transferred to the temporary  
409 detention facility, including during any period prior to the initiation of transportation of the person from  
410 the facility to which he was transported pursuant to § 37.2-808 and while transportation is being provided  
411 pursuant to this section.

412           In such cases, a copy of the temporary detention order shall accompany the person being  
413 transported pursuant to this section at all times and shall be delivered by the alternative transportation  
414 provider to the temporary detention facility. The temporary detention facility shall return a copy of the  
415 temporary detention order to the court designated by the magistrate as soon as is practicable. Delivery of  
416 an order to a law-enforcement officer or alternative transportation provider and return of an order to the  
417 court may be accomplished electronically or by facsimile.

418           The order may include transportation of the person to such other medical facility as may be  
419 necessary to obtain further medical evaluation or treatment prior to placement as required by a physician  
420 at the admitting temporary detention facility. Nothing herein shall preclude a law-enforcement officer or  
421 alternative transportation provider from obtaining emergency medical treatment or further medical  
422 evaluation at any time for a person in his custody as provided in this section. Such medical evaluation or  
423 treatment shall be conducted immediately in accordance with state and federal law.

424           C. If an alternative transportation provider providing transportation or maintaining custody of a  
425 person who is the subject of a temporary detention order becomes unable to continue providing  
426 transportation or maintaining custody of the person at any time after taking custody of the person, the  
427 primary law-enforcement agency for the jurisdiction in which the alternative transportation provider is

428 located at the time he becomes unable to continue providing transportation or maintaining custody shall  
429 take custody of the person and shall transport the person to the facility of temporary detention. In such  
430 cases, a copy of the temporary detention order shall accompany the person being transported and shall be  
431 delivered to and returned by the temporary detention facility in accordance with the provisions of  
432 subsection B.

433 D. In cases in which an alternative facility of temporary detention is identified and the law-  
434 enforcement agency or alternative transportation provider identified to provide transportation in  
435 accordance with subsection B continues to have custody of the person, the local law-enforcement agency  
436 or alternative transportation provider shall transport the person to the alternative facility of temporary  
437 detention identified by the employee or designee of the community services board or certified evaluator.  
438 In cases in which an alternative facility of temporary detention is identified and custody of the person has  
439 been transferred from the law-enforcement agency or alternative transportation provider that provided  
440 transportation in accordance with subsection B to the initial facility of temporary detention, the employee  
441 or designee of the community services board or certified evaluator shall request, and a magistrate may  
442 enter an order specifying, an alternative transportation provider or, if no alternative transportation provider  
443 is available, willing, and able to provide transportation in a safe manner, the local law-enforcement agency  
444 for the jurisdiction in which the person resides or, if the nearest boundary of the jurisdiction in which the  
445 person resides is more than 50 miles from the nearest boundary of the jurisdiction in which the person is  
446 located, the law-enforcement agency of the jurisdiction in which the person is located, to provide  
447 transportation.

448 E. The magistrate may change the transportation provider specified in a temporary detention order  
449 at any time prior to the initiation of transportation of a person who is the subject of a temporary detention  
450 order pursuant to this section. If the designated transportation provider is changed by the magistrate at any  
451 time after the temporary detention order has been executed but prior to the initiation of transportation, the  
452 transportation provider having custody of the person shall transfer custody of the person to the  
453 transportation provider subsequently specified to provide transportation. For the purposes of this

454 subsection, "transportation provider" includes both a law-enforcement agency and an alternative  
455 transportation provider.

456 F. A law-enforcement officer may lawfully go to or be sent beyond the territorial limits of the  
457 county, city, or town in which he serves to any point in the Commonwealth for the purpose of executing  
458 any temporary detention order pursuant to this section. Law-enforcement agencies may enter into  
459 agreements to facilitate the execution of temporary detention orders and provide transportation.

460 G. No person who provides alternative transportation pursuant to this section shall be liable to the  
461 person being transported for any civil damages for ordinary negligence in acts or omissions that result  
462 from providing such alternative transportation.

463 H. For purposes of this section:

464 "Law-enforcement agency" includes an auxiliary police force established pursuant to § 15.2-1731.

465 "Law-enforcement officer" includes an auxiliary police officer appointed or provided for pursuant  
466 to §§ 15.2-1731 and 15.2-1733.

467 **§ 37.2-814. Commitment hearing for involuntary admission; written explanation; right to**  
468 **counsel; rights of petitioner.**

469 A. The commitment hearing for involuntary admission shall be held after a sufficient period of  
470 time has passed to allow for completion of the examination required by § 37.2-815, preparation of the  
471 preadmission screening report required by § 37.2-816, and initiation of mental health treatment to stabilize  
472 the person's psychiatric condition to avoid involuntary commitment where possible, but shall be held  
473 within 72 hours of the execution of the temporary detention order as provided for in § 37.2-809; however,  
474 if the 72-hour period herein specified terminates on a Saturday, Sunday, legal holiday, or day on which  
475 the court is lawfully closed, the person may be detained, as herein provided, until the close of business on  
476 the next day that is not a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed.

477 B. At the commencement of the commitment hearing, the district court judge or special justice  
478 shall inform the person whose involuntary admission is being sought of his right to apply for voluntary  
479 admission for inpatient treatment as provided for in § 37.2-805 and shall afford the person an opportunity  
480 for voluntary admission. The district court judge or special justice shall advise the person whose

481 involuntary admission is being sought that if the person chooses to be voluntarily admitted pursuant to §  
482 37.2-805, such person will be prohibited from possessing, purchasing, or transporting a firearm pursuant  
483 to § 18.2-308.1:3. The judge or special justice shall ascertain if the person is then willing and capable of  
484 seeking voluntary admission for inpatient treatment. In determining whether a person is capable of  
485 consenting to voluntary admission, the judge or special justice may consider evidence regarding the  
486 person's past compliance or noncompliance with treatment. If the judge or special justice finds that the  
487 person is capable and willingly accepts voluntary admission for inpatient treatment, the judge or special  
488 justice shall require him to accept voluntary admission for a minimum period of treatment not to exceed  
489 72 hours. After such minimum period of treatment, the person shall give the facility 48 hours' notice prior  
490 to leaving the facility. During this notice period, the person shall not be discharged except as provided in  
491 § 37.2-837, 37.2-838, or 37.2-840. The person shall be subject to the transportation provisions as provided  
492 in § 37.2-829 and the requirement for preadmission screening by a community services board or certified  
493 evaluator as provided in § 37.2-805.

494 C. If a person is incapable of accepting or unwilling to accept voluntary admission and treatment,  
495 the judge or special justice shall inform the person of his right to a commitment hearing and right to  
496 counsel. The judge or special justice shall ascertain if the person whose admission is sought is represented  
497 by counsel, and, if he is not represented by counsel, the judge or special justice shall appoint an attorney  
498 to represent him. However, if the person requests an opportunity to employ counsel, the judge or special  
499 justice shall give him a reasonable opportunity to employ counsel at his own expense.

500 D. A written explanation of the involuntary admission process and the statutory protections  
501 associated with the process shall be given to the person, and its contents shall be explained by an attorney  
502 prior to the commitment hearing. The written explanation shall describe, at a minimum, the person's rights  
503 to (i) retain private counsel or be represented by a court-appointed attorney, (ii) present any defenses  
504 including independent evaluation and expert testimony or the testimony of other witnesses, (iii) be present  
505 during the hearing and testify, (iv) appeal any order for involuntary admission to the circuit court, and (v)  
506 have a jury trial on appeal. The judge or special justice shall ascertain whether the person whose  
507 involuntary admission is sought has been given the written explanation required herein.

508 E. To the extent possible, during or before the commitment hearing, the attorney for the person  
509 whose involuntary admission is sought shall interview his client, the petitioner, the examiner described in  
510 § 37.2-815, the community services board staff or certified evaluator, and any other material witnesses.  
511 He also shall examine all relevant diagnostic and other reports, present evidence and witnesses, if any, on  
512 his client's behalf, and otherwise actively represent his client in the proceedings. A health care provider  
513 shall disclose or make available all such reports, treatment information, and records concerning his client  
514 to the attorney, upon request. The role of the attorney shall be to represent the wishes of his client, to the  
515 extent possible.

516 F. The petitioner shall be given adequate notice of the place, date, and time of the commitment  
517 hearing. The petitioner shall be entitled to retain counsel at his own expense, to be present during the  
518 hearing, and to testify and present evidence. The petitioner shall be encouraged but shall not be required  
519 to testify at the hearing, and the person whose involuntary admission is sought shall not be released solely  
520 on the basis of the petitioner's failure to attend or testify during the hearing.

521 **§ 37.2-816. Commitment hearing for involuntary admission; preadmission screening report.**

522 The district court judge or special justice shall require a preadmission screening report from the  
523 community services board that serves the county or city where the person resides or, if impractical, where  
524 the person is located or from the certified evaluator. The report shall be admitted as evidence of the facts  
525 stated therein and shall state (i) whether the person has a mental illness and whether there exists a  
526 substantial likelihood that, as a result of mental illness, the person will, in the near future, (a) cause serious  
527 physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening  
528 harm and other relevant information, if any, or (b) suffer serious harm due to his lack of capacity to protect  
529 himself from harm or to provide for his basic human needs, (ii) whether the person is in need of involuntary  
530 inpatient treatment, (iii) whether there is no less restrictive alternative to inpatient treatment, and (iv) the  
531 recommendations for that person's placement, care, and treatment including, where appropriate,  
532 recommendations for mandatory outpatient treatment. The board or the certified evaluator shall provide  
533 the preadmission screening report to the court prior to the hearing, and the report shall be admitted into  
534 evidence and made part of the record of the case. In the case of a person who has been sentenced and

535 committed to the Department of Corrections and who has been examined by a psychiatrist or clinical  
536 psychologist, the judge or special justice may proceed to adjudicate whether the person has mental illness  
537 and should be involuntarily admitted without requesting a preadmission screening report from the  
538 community services board.

539 **§ 37.2-817. Involuntary admission.**

540 A. The district court judge or special justice shall render a decision on the petition for involuntary  
541 admission after the appointed examiner has presented the report required by § 37.2-815, and after the  
542 community services board that serves the county or city where the person resides or, if impractical, where  
543 the person is located or certified evaluator has presented a preadmission screening report with  
544 recommendations for that person's placement, care, and treatment pursuant to § 37.2-816. These reports,  
545 if not contested, may constitute sufficient evidence upon which the district court judge or special justice  
546 may base his decision. The examiner, if not physically present at the hearing, and the treating physician  
547 at the facility of temporary detention shall be available whenever possible for questioning during the  
548 hearing through a two-way electronic video and audio or telephonic communication system as authorized  
549 in § 37.2-804.1.

550 B. Any employee or designee of the local community services board, as defined in § 37.2-809,  
551 representing the community services board or certified evaluator that prepared the preadmission screening  
552 report shall attend the hearing in person or, if physical attendance is not practicable, shall participate in  
553 the hearing through a two-way electronic video and audio or telephonic communication system as  
554 authorized in § 37.2-804.1. Where a hearing is held outside of the service area of the community services  
555 board that prepared the preadmission screening report, and it is not practicable for a representative of the  
556 community services board that prepared the preadmission screening report to attend or participate in the  
557 hearing, arrangements shall be made by the community services board that prepared the preadmission  
558 screening report for an employee or designee of the community services board serving the area in which  
559 the hearing is held to attend or participate on behalf of the community services board that prepared the  
560 preadmission screening report. The employee or designee of the local community services board, as  
561 defined in § 37.2-809, representing the community services board that prepared the preadmission

562 screening report or attending or participating on behalf of the community services board that prepared the  
563 preadmission screening report or the certified evaluator shall not be excluded from the hearing pursuant  
564 to an order of sequestration of witnesses. The community services board that prepared the preadmission  
565 screening report shall remain responsible for the person subject to the hearing and, prior to the hearing,  
566 shall send the preadmission screening report through certified mail, personal delivery, facsimile with  
567 return receipt acknowledged, or other electronic means with documented acknowledgment of receipt to  
568 the community services board attending the hearing. Where a community services board attends the  
569 hearing on behalf of the community services board that prepared the preadmission screening report, the  
570 attending community services board shall inform the community services board that prepared the  
571 preadmission screening report of the disposition of the matter upon the conclusion of the hearing. In  
572 addition, the attending community services board shall transmit the disposition through certified mail,  
573 personal delivery, facsimile with return receipt acknowledged, or other electronic means with documented  
574 acknowledgment of receipt.

575 At least 12 hours prior to the hearing, the court shall provide to the community services board or  
576 certified evaluator that prepared the preadmission screening report the time and location of the hearing. If  
577 the representative of the community services board or certified evaluator that prepared the preadmission  
578 screening report will be present by telephonic means, the court shall provide the telephone number to the  
579 community services board or certified evaluator. If a representative of a community services board will  
580 be attending the hearing on behalf of the community services board that prepared the preadmission  
581 screening report, the community services board that prepared the preadmission screening report shall  
582 promptly communicate the time and location of the hearing and, if the representative of the community  
583 services board attending on behalf of the community services board that prepared the preadmission  
584 screening report will be present by telephonic means, the telephone number to the attending community  
585 services board.

586 C. After observing the person and considering (i) the recommendations of any treating or  
587 examining physician or psychologist licensed in Virginia, if available, (ii) any past actions of the person,  
588 (iii) any past mental health treatment of the person, (iv) any examiner's certification, (v) any health records

589 available, (vi) the preadmission screening report, and (vii) any other relevant evidence that may have been  
590 admitted, including whether the person recently has been found unrestorably incompetent to stand trial  
591 after a hearing held pursuant to subsection E of § 19.2-169.1, if the judge or special justice finds by clear  
592 and convincing evidence that (a) the person has a mental illness and there is a substantial likelihood that,  
593 as a result of mental illness, the person will, in the near future, (1) cause serious physical harm to himself  
594 or others as evidenced by recent behavior causing, attempting, or threatening harm and other relevant  
595 information, if any, or (2) suffer serious harm due to his lack of capacity to protect himself from harm or  
596 to provide for his basic human needs, and (b) all available less restrictive treatment alternatives to  
597 involuntary inpatient treatment that would offer an opportunity for the improvement of the person's  
598 condition have been investigated and determined to be inappropriate, the judge or special justice shall by  
599 written order and specific findings so certify and order that the person be admitted involuntarily to a  
600 facility for a period of treatment not to exceed 30 days from the date of the court order. Such involuntary  
601 admission shall be to a facility designated by the community services board that serves the county or city  
602 in which the person was examined or by the certified evaluator as provided in § 37.2-816. If the community  
603 services board or the certified evaluator does not designate a facility at the commitment hearing, the person  
604 shall be involuntarily admitted to a facility designated by the Commissioner. Upon the expiration of an  
605 order for involuntary admission, the person shall be released unless (A) he is involuntarily admitted by  
606 further petition and order of a court, which shall be for a period not to exceed 180 days from the date of  
607 the subsequent court order, (B) he makes application for treatment on a voluntary basis as provided for in  
608 § 37.2-805, or (C) he is ordered to mandatory outpatient treatment following a period of inpatient treatment  
609 pursuant to § 37.2-817.01.

610 **§ 37.2-1104. Temporary detention in hospital for testing, observation, or treatment.**

611 A. As used in this section, "mental or physical condition" includes intoxication.

612 B. The court or, if the court is unavailable, a magistrate serving the jurisdiction where the  
613 respondent is located may, with the advice of a licensed physician who has attempted to obtain informed  
614 consent of an adult person to treatment of a mental or physical condition, issue an order authorizing  
615 temporary detention of the adult person in a hospital emergency department or other appropriate facility

616 for testing, observation, or treatment upon a finding that (i) probable cause exists to believe the person is  
617 incapable of making or communicating an informed decision regarding treatment of a physical or mental  
618 condition due to a mental or physical condition and (ii) the medical standard of care calls for observation,  
619 testing, or treatment within the next 24 hours to prevent injury, disability, death, or other harm to the  
620 person resulting from such mental or physical condition.

621 C. The duration of temporary detention pursuant to this section shall not exceed 24 hours, unless  
622 extended by the court as part of an order authorizing treatment under § 37.2-1101. If, before completion  
623 of authorized testing, observation, or treatment, the physician determines that a person subject to an order  
624 under this subsection has become capable of making and communicating an informed decision, the  
625 physician shall rely on the person's decision on whether to consent to further testing, observation, or  
626 treatment. If, before issuance of an order under this subsection or during its period of effectiveness, the  
627 physician learns of an objection by a member of the person's immediate family to the testing, observation,  
628 or treatment, he shall so notify the court or magistrate, who shall consider the objection in determining  
629 whether to issue, modify, or terminate the order.

630 D. A court or, if the court is unavailable, a magistrate serving the jurisdiction may issue an order  
631 authorizing temporary detention for testing, observation, or treatment for a person who is also the subject  
632 of an emergency custody order issued pursuant to § 37.2-808, if such person meets the criteria set forth in  
633 subsection B. In any case in which an order for temporary detention for testing, observation, or treatment  
634 is issued for a person who is also the subject of an emergency custody order pursuant to § 37.2-808, the  
635 hospital emergency room or other appropriate facility in which the person is detained for testing,  
636 observation, or treatment shall notify the nearest community services board when such testing,  
637 observation, or treatment is complete, and the designee of the community services board or certified  
638 evaluator shall, as soon as is practicable and prior to the expiration of the order for temporary detention  
639 issued pursuant to subsection B, conduct an evaluation of the person to determine if he meets the criteria  
640 for temporary detention pursuant to § 37.2-809.

641 **2. That at the end of each calendar year, participating hospitals with psychiatric emergency**  
642 **departments shall report the number of temporary detention order evaluations completed, the**

643 number of temporary detention orders petitioned, the number of individuals evaluated for  
644 temporary detention who were determined not to meet the criteria for temporary detention, and  
645 the number of individuals under a temporary detention order admitted to a state facility to the  
646 Chairmen of the Senate Committee on Education and Health, the House Committee on Health,  
647 Welfare and Institutions, and the Behavioral Health Commission.

648 3. That pursuant to the provisions of this act, the certified evaluator shall conduct the temporary  
649 detention order evaluation in lieu of the employee or designee of the local community services board  
650 if the person subject to the temporary detention order evaluation is located in a psychiatric  
651 emergency department.

652 4. That the provisions of this act shall expire on July 1, 2025.

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